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January 8, 2015

Gary Shiners
Executive Secretary
National Labor Relations Board
1099 14th Street NW
Washington, DC 20570

RE: UPMC Case No. 06-CA-081896
Respondents' Notice of Supplemental Authority

Dear Mr. Shiners:

Respondents submit this as their response to *Purple Communications Inc.*, 361 NLRB No. 126 (Dec. 11, 2014) and the Charging Party's Notice of Supplemental Authority regarding the same.

As an initial matter, the Board erred and should reverse its decision in *Purple Communications*. Furthermore, even if *Purple Communications* was correctly decided, it should not be applied retroactively here. The Board cited *Aramark School Services*, 337 NLRB 1063 (2002) and *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958) for the broad proposition that the Board should apply "new policies and standards 'to all pending cases in whatever stage.'" *Id.* at 16, n.79. However, the "new policies and standards" involved in *Aramark* and *Deluxe* related to Board representation case procedures and, as such, do not raise the same due process considerations as mid-stream changes in substantive law in an unfair labor practice case.

In any event, Respondents' Policies are lawful even under the new *Purple Communications* standard. Respondents have illustrated that "special circumstances" justify Respondents' Policies in the hospital setting. See Post-hearing Brief for Respondents at 26-30 and Answering Briefs in Response to Exceptions at 16-20. Moreover, the Supreme Court has recognized that special circumstances exist in hospitals as a matter of law. See *NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773, 790 and n.16 (1979).

If there is any doubt that Respondents meet the new *Purple Communications* standard, Respondents must be permitted to present additional evidence relevant to the "special circumstances" exception expressly announced therein. *Purple Communications Inc.*, 361 NLRB No. 126 at 14-15. After articulating its "new policy" and intention to apply it retroactively, the Board in *Purple Communications* "remand[ed] this issue to the judge to allow the Respondent to present evidence of special circumstances" and further stated that "[o]ther employers with email restrictions affected by today's decision will similarly have an opportunity to rebut the presumption." *Id.* at 17.

Accordingly, before applying its new policy to invalidate any of Respondents' work rules, the Board should remand the matter so that Respondents have an opportunity to present evidence made relevant by this new Board decision. *Id.* at 17-18 (ordering remand).

Sincerely,

A handwritten signature in black ink, appearing to read "Mark M. Stuble". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark M. Stuble

MMS:kif

cc: Rhonda P. Ley, Acting Regional Director, Region 6
Claudia Davidson, Esquire
Kathy L. Krieger, Esquire
Betty Gridina, Esquire
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